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D.T.E. 00-33

Petition of Western Massachusetts Electric Company for approval of its Transition Charge Reconciliation filing for the period March 1, 1998 through December 31, 1999.

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I. INTRODUCTION

On March 31, 2000, Western Massachusetts Electric Company ("WMECo" or "Company") filed its Transition Charge Reconciliation for the 22-month period March 1, 1998 through December 31, 1999, with the Department of Telecommunications and Energy ("Department").[1] On October 1, 2000, WMECo submitted an amended filing in this docket incorporating relevant provisions of a Settlement approved by the Department in another docket, Western Massachusetts Electric Company, D.T.E. 97-120 (Phase 2) (2000). In total, the Company alleges a $15 million under-recovery of transition costs during this period (Exh. WM-1, at 3).

Pursuant to notice duly issued, the Department conducted a public hearing on the Company's amended filing on November 17, 2000. The Office of the Attorney General ("Attorney General") intervened as a matter of right at that time. Evidentiary hearings were held at the Department's offices on May 1-3, 2001. The Company sponsored two witnesses, John P. Stack, executive director of corporate accounting and taxes for Northeast Utilities, and Richard Bauman, manager of revenue requirements for Northeast Utilities Service Company ("Northeast Utilities" or "NUSCo"). The Attorney General sponsored David Effron, a

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1 The Electric Restructuring Act, Chapter 164 of the Acts of 1997 ("Restructuring Act" or "Act"), provides for the recovery of transition costs and also provides that the Department will "audit, review and reconcile the difference between projected transition costs and actual transition costs" of an electric company every 18 months after the Department has approved a restructuring plan for the electric company. G.L. c. 164, §§ 1A, 1B, and 1G.

certified public accountant, as his witness. The evidentiary record consists of 28 Department exhibits, 106 Attorney General exhibits, 61 Company exhibits, and 16 record requests.

In this Order, the Department addresses: (1) application of several financial accounting standards with regard to pensions; (2) application of those investment tax credits associated with the sale of the Company's fossil/hydro generating facilities; (3) application of investment tax credits arising from the Company's retiring the Millstone 1 nuclear plant; (4) the Company's capital structure; (5) application of transmission related revenues; (6) application of transition costs associated with certain wholesale contracts; and (7) the requirements to be included in future compliance filings.

II. STANDARD OF REVIEW

On January 5, 2000, the Department approved WMECo's Restructuring Plan compliance filing. Western Massachusetts Electric Company, D.T.E. 97-120-E (2000). In reviewing annual reconciliation filings, the Department must ensure that the proposed reconciliations are consistent with or substantially comply with the Act, the Company's approved restructuring plan, applicable law, and Department precedent. See, e.g., Boston Edison Company, D.T.E. 98-111, at 4 (1999).

III. FINANCIAL ACCOUNTING STANDARDS No. 106

A. The Company's Proposal

The Company proposes to offset the generation portion of the transition obligation included in the Company's transition costs totaling $8,061,000, by $59,901 (Exhs. AG-2-31; AG-2-6; Tr. 1, at 11; Tr. 2, at 177-179; Company Brief at 12). The Company states that this amount results from divestiture of the fossil/hydro generating units, and was actuarially determined in accordance with Financial Accounting Standards No. 106 - Employers' Accounting for Post-Retirement Benefits Other Than Pensions ("FAS 106") (Exhs. AG-2-31; AG-2, exh. DJE-1R, at 2; Tr. 1, at 11).[2] FAS 106 changed the method of accounting for post-retirement benefits from a pay-as-you-go basis to an accrual basis beginning January 1, 1993. At the time of adoption, FAS 106 required that the obligation for future benefits already earned by current retirees and employees with past service ("transition obligation") be recognized and amortized over a period of not more than twenty years. D.T.E. 97-120, at 64. Because the generation portion of those costs is collected through the transition charge, the Company allocated 26.25 percent of the transition obligation for post-retirement benefits to generation based on the ratio of active generation employees to total active employees (Exh. AG-2, at 7). In addition to the Company's specific obligation for post-retirement benefits, the Company included in its transition charge an allocated portion of the transition obligations for post-retirement benefits from NUSCo and Northeast Nuclear Energy Company ("NNECo"), service companies of Northeast Utilities which provide administrative and engineering services to the generating function (Exh. AG-2, at 7).

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[2] The $59,901 amount consists of three elements: a net gain of $166,073 resulting from a reduction in the accumulated post-retirement benefit obligation; an expense of $152,452 because the transition obligation with respect to the transferred employees had to be recognized immediately rather than amortized over 20 years; and an unrecognized actuarial gain of $46,310 for the sole transferred employee who was vested in the post-retirement benefit program (Exh. AG-2, at 10-12; Tr. 2, at 177-179).

B. Positions of the Parties

1. The Attorney General

The Attorney General criticizes the Company's attempt to limit the reduction of transition costs to $59,901, the net actuarial gain applicable to the transferred employees (Exh. AG-2, at 6, citing D.T.E. 97-120, at 66). The Attorney General argues that WMECo's transition costs must be reduced by $505,000, representing 26.25 percent of the actuarial gains associated with the Company's transition obligation for post-retirement benefits as of March 1, 1998 (Exh. AG-2, exh. DJE-1R, at 3). The Attorney General supports this position by pointing out that the Company included 26.25 percent of the transition obligation for post-retirement benefits in the determination of its transition costs (Attorney General Brief at 7). Accordingly, the Attorney General concludes that it is appropriate for 26.25 percent of the actuarial gains to be recognized in computing the transition obligation (id. at 6). Moreover, the Attorney General argues that since the Company's FAS 106 transition obligation includes an allocation from NUSCo, there should be a similar proration of the FAS 106 unrecognized gains related to the transition obligation of that service company, which the Attorney General calculates to be $96,000 (id. at 9-10).

2. The Company

The Company contends that its proposed reduction to the FAS 106 transition obligation of $59,901 should be approved by the Department because it includes actuarially determined reductions in costs, as directed by the Department in D.T.E. 97-120 (Company Brief at 10, 12, 14). The Company claims that the Attorney General's proposal is based upon assumptions and allocations rather than actuarial input, and assumes without evidence that $505,000 in FAS 106 costs have been eliminated (id. at 12, 14-15). The Company asserts that the Attorney General's proposal must be rejected because adjustments based upon actuarial inputs are more reliable than adjustments based upon assumptions and allocations (id. at 17-18).

With respect to the Attorney General's claim that a credit should be given for the NUSCo FAS 106 unrecognized gain, the Company argues that no credit should be given since none of the NUSCo employees were affected by the sale of its fossil and hydro units (Exh. AG-2-10). The Company contends that to give such a credit would artificially reduce the FAS 106 transition obligation (Company Brief at 17).

C. Analysis and Findings

The Department must decide whether the FAS 106 transition obligation should be reduced because of previously unrecognized gains and, if so, to what extent. Reductions in the transition obligation balance resulting from declining costs can only be determined actuarially pursuant to the Department's directives in D.T.E. 97-120.[3] The Company's proposed adjustment has been actuarially determined, whereas the Attorney General's proposed adjustment has not. Accordingly, the Attorney General's proposal to reduce the transition obligation by an allocated amount of total plan unrecognized gains must be rejected because there is no actuarially-based indication that post-retirement benefit costs have been avoided (Tr. 2, at 179-180, 190-191).

[3] Actuarial computations are based on actual employees and use actual employee data such as employee age, length of service, and salary at the time of divestiture (Exh. WM-5, at 9).

The Company correctly noted that "an unrecognized gain today does not mean that the value of the fund will not drop tomorrow, wiping out that unrecognized gain" (Company Brief at 13). Just as a company's stock value can change from one minute to the next in the stock market, a fund's value is constantly changing. This volatility is the reason it is difficult to gauge a transition obligation's value based on a particular "snapshot" valuation. The Company's method, unlike the Attorney General's, does not presume that the fund value at any given point in time will remain constant ad infinitum. For these reasons, we reject the Attorney General's argument.

Similarly, the Department rejects the Attorney General's proposal with respect to NUSCo because the FAS 106 gains allocated to WMECo by the Attorney General were not actuarially determined. Moreover, even if those gains were actuarially determined, any allocation would be inappropriate since there is no indication that the NUSCo employees were affected by the fossil/hydro sale (Exh. AG-2-10). Accordingly, the Department accepts the Company's FAS 106 calculations.

IV. FINANCIAL ACCOUNTING STANDARDS No. 87

A. The Company's Proposal

The Company proposes a $1,753,839 adjustment for pension credits as a result of the divestiture of its fossil/hydro units. In D.T.E. 97-120, at 71, the Department determined that the effect of the divestiture of generating property on the Company's pension obligation shall be included in the transition charge. The amount of the adjustment was to be determined and recognized at the time of each divestiture. Id. When WMECo sold its fossil/hydro generating units, it contracted with actuarial experts, Hewitt Associates, LLC, to adjust its transition costs for the pension-related effects of the divestiture (Tr. 1, at 92-94). The Company states that the actuaries took the projected benefit obligation ("PBO") for the approximately 1,338 WMECo active or retired employees eligible for pension benefits and updated it from January 1, 1999 to July 23, 1999, the actual date of divestiture (Exh. AG-1-5 at 4, 5, 7). This adjustment resulted in a reduction to the Company's transition costs of $1,753,839 (id. at 7). The Company contends that no other pension-related adjustments to the transition costs are necessary or warranted (Exh. WM-5, at 9).

B. Positions of the Parties

1. The Attorney General

The Attorney General argues that the Company's proposed adjustment to the transition cost is understated since the adjustment fails to include the generation-related Financial Accounting Standard No. 87 ("FAS 87")[4] unrecognized transition obligation, prior service cost and unrecognized gains and losses, as ordered by the Department in D.T.E. 97-120 (Attorney General Brief at 11). The Attorney General contends that if these factors are taken into consideration, a net unrecognized FAS 87 gain of $16,823,000 allocable to total generation is produced (Attorney General Brief at 11). The Attorney General concludes that when this amount is allocated to the divested plants based upon the ratio of employees at the sold plants to total generation employees, a credit to the transition charge of $4,816,000 results (Attorney General Brief at 11-12).

[4] FAS 87 provides the guidelines for pension accounting.

Two further pension-related adjustments are proffered by the Attorney General. First, the Attorney General argues that the transition charge must be reduced by an additional pension gain of $801,000, attributable to a previously unaccounted-for employee who transferred to an unregulated subsidiary of Northeast Utilities following the sale of WMECo's generating facilities (Attorney General Brief at 12, citing Exh. AG-2, at 12). The $801,000 amount was calculated by subtracting the pension benefit obligation of the 31 employees who were transferred to Consolidated Edison following the divestiture from the accumulated pension benefit of those employees as of the divestiture date, and multiplying the resulting gain of $776,000 by a factor of 32/31 (Attorney General Brief at 12, citing Exh. AG-2, exh. DJE-1R, at 3).

Second, the Attorney General proposes to further reduce the transition charge by $1,324,000 by allocating to generation a portion of the net unrecognized FAS 87 gain associated with NUSCo (Attorney General Brief at 15, citing Exh. AG-2, exh. DJE-1R, at 3). The Attorney General determined the $1,324,000 figure by multiplying the NUSCo FAS 87 net unrecognized pension gain of $173,033,000 by the ratio of total WMECo generation employees to the total number employees of WMECo, NUSCo, and NNECo and multiplying that amount by 28.63, the Attorney General's applied ratio of employees allocable to the sold assets to the total generation employees of WMECo (Exh. AG-2, exh. DJE-1R, at 3). Adding the adjustments of $801,000 and $1,324,000 to the $4,816,000 adjustment computed above, the Attorney General contends that a total pension-related credit to the Company's transition charge of $6,941,000 is reasonable (Exh. AG-2, exh. DJE-1R, at 3).

2. The Company

The Company argues that the $1,753,839 adjustment for pension credits as a result of the divestiture of its fossil/hydro units is all that is needed to properly calculate its transition costs (Company Brief at 19-20).[5] The Company contends that the Attorney General's proposed adjustment has two major flaws (Company Brief at 20, citing Exh. WM-5, at 8-9). The Company states that the Attorney General's starting point in making his calculations is incorrect because it is based on the total unrecognized gain related to the pension fund (Exh. WM-5, at 10). However, the Company contends that the pension fund includes active, retired, and terminated-vested employees (id.). The Company argues that any pension credit computation should be limited to the FAS 87 net unrecognized gain related to active employees since retired and terminated-vested employees cannot be affected by the divestiture (id.). The Company states that the Attorney General's method results in a net unrecognized gain which is overstated by 60 percent (id. at 10-11).

Second, the Company states that the Attorney General's proposed adjustment is based upon estimates, general assumptions, and allocations rather than actuarial data (Exh. WM-5, at 8; Tr. 2, at 179-180, 190-191). The Company instead relies on actual data based on the employees who transferred with the sold plants, such as employee age, length of service and

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5 The Company contends that the recognition of pension credits as a result of the divestiture is not in compliance with accounting requirements since the Company continues to be liable for the pensions benefits of the departed WMECo employees. However, WMECo reduced its transition costs by the amount of the pension credits computed by its actuaries to comply with the Department's directives in D.T.E. 97-120 (Company Brief at 19).

salary at the time of sale (Exh. WM-5, at 8, 9). Accordingly, the Company contends that when actual data is available, the use of estimates is inappropriate. Therefore, the Company argues that its credit calculation should be adopted (id. at 9).

The Company opposes the two additional pension-related credits to its transition charges proposed by the Attorney General (Company Brief at 24). With respect to the employee who transferred to a non-regulated subsidiary of Northeast Utilities following the divestiture, the Company argues that no allocation of the unrecognized net pension gain associated with this individual is warranted because WMECo still remains responsible for paying this employee's vested pension benefits (id. at 24). The Company suggests, however, that if some adjustment was appropriate, the amount of that adjustment would be far less than the $800,000 proposed by the Attorney General (id. at 25).

With repect to the reduction to the Company's transition costs by an allocated portion of NUSCo's net unrecognized pension gain, the Company argues that no such allocation is warranted since none of NUSCo's employees were transferred as a result of the fossil/hydro sale (id. at 25, citing Exh. WM-5, at 14). Accordingly, the Company contends that the pension plan with respect to these individuals was not affected by the divestiture (Exh. WM-5, at 14).

C. Analysis and Findings

The issue before the Department is whether to accept the Company's proposed adjustment for pension credits as a result of the divestiture of its fossil/hydro units. The Attorney General offers an alternative calculation based on certain assumptions. The use of estimates, assumptions, and allocations in calculating the pension credit is normally appropriate when specifically identifiable actual information is unavailable. In this case, however, the Company's actuarial experts, Hewitt Associates, calculated the net unrecognized gain applicable to the employees who left WMECo as a result of the fossil/hydro sale on an employee-specific basis using actual data (Exh. WM-5, at 9). Moreover, the Attorney General did not contest the calculation itself. Since actuarial data is available, the Department need not rely on estimated amounts. The Department accepts the findings of the Company's actuarial experts and determines that the Company's transition costs be accordingly reduced by $1,753,839.[6]

The Attorney General also argues that the Company must reduce its transition costs by $801,000 for the net unrecognized FAS 87 gain associated with one generation employee who remained with WMECo but transferred to an affiliated unregulated subsidiary when the

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6 Since the Attorney General had no actuarial data available, he was left to compute his proposed adjustment using assumptions and allocations, which raises several questions. For example, the Attorney General allocated the net FAS 87 unrecognized gain for the entire pension plan to the employees affected by the divestiture. That dollar amount, however, includes gains applicable to retired and terminated-vested employees as well as active employees (Exh. WM-5, at 10-11). Because retired and terminated-vested employees cannot be affected by the divestiture, the gains associated with those employees should have been excluded before making an allocation to the employees affected by the divestiture (id. at 10). That result could have been accomplished by first allocating the total net unrecognized gain to active employees by dividing 526 by 1,338 (active employees vested in the pension plan by total vested employees) and multiplying the resulting fraction by the total net unrecognized gain of $64 million. That figure, $25.2 million, should have been allocated to employees affected by the divestiture by dividing 31 by 526 (the number of employees vested in the pension plan who actually left WMECo when the fossil/hydro units were sold, divided by total active employees vested in the pension plan) and multiplying the resulting fraction by $25.2 million. This would produce a net unrecognized gain allocable to the employees affected by the divestiture of $1,485,000, an amount closer to the $1,753,839 computed by the Company's actuarial experts than the $4,816,000 proposed by the Attorney General.

fossil/hydro units were sold (Exhs. WM-5, at 11-14; AG-2-30, at 1). The pension credit calculated by the Company's actuarial experts, however, is for the 31 employees who left WMECo when the fossil/hydro units were sold. The Department finds that the appropriate treatment of the pension credit associated with this additional employee must be determined now for ratemaking purposes, otherwise it will be irretrievably lost because the employee has since transferred to a non-regulated subsidiary. Therefore, there would be no mechanism to return the unrecognized gain associated with this employee to WMECo's customers either through reduced transition charges or lower distribution rates.[7]

The amount of the Attorney General's proposal of claimed pension credit of $10,495,000 is clearly disproportionate to the pension credit calculated by the Company's actuaries. The Company's actuaries computed a pension credit of $1,753,839 for 31 employees, for an average of $56,581 per employee, whereas the Attorney General calculated a credit equal to almost half the total pension credit for a single employee. The Department determines that the Company's transition charges shall be reduced by an additional $56,581, representing the average pension credit per employee, calculated as the gain attributable to the employee who remained with WMECo but transferred to an affiliated unregulated subsidiary when the fossil/hydro units were sold.

None of the NUSCo employees transferred as a result of the fossil/hydro sale, nor was the pension plan with respect to these FAS employees affected in any way (Exh. WM-5,

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7 Should future contributions to the pension plan become necessary for this employee, they would appropriately become the responsibility of the employee's non-regulated employer and should not be provided for by WMECo's customers.

at 14).[8] Accordingly, it would be inappropriate for the Company to allocate the pension credit applicable to the NUSCo employees. Therefore, the Department rejects the Attorney General's proposal to reduce the Company's transition charges by an allocated portion of the unrecognized pension gains associated with NUSCo. In conclusion, the Department accepts the Company's proposed adjustment of pension credits for the 31 employees who left WMECo when the fossil/hydro units were sold, and determines that the Company's transition costs be accordingly reduced by $1,810,420.

V. INVESTMENT TAX CREDITS & FOSSIL/HYDRO DIVESTITURE

A. The Company's Proposal

When the Company sold its fossil/hydro generating facilities in 1999 at a profit, it discontinued the practice of reducing the transition charge by the investment tax credit ("ITC") associated with the sold assets (Exh. WM-6, at 3). According to the Company, ITCs represent reductions in prior years' income taxes payable to the federal government because of investments in certain qualifying property such as generating facilities (id. at 2). WMECo explains that these reduced tax payments effectively lower the cost of the assets acquired (Tr. 1, at 97-98).[9] Traditionally, ITCs are accumulated over the years and returned to customers over the productive lives of the properties that gave rise to the credits

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8 The Attorney General did not recommend a comparable adjustment with respect to NNECo.

9 For example, if the Internal Revenue Service permits a taxpayer to reduce its tax payments by $1,000 because it invested in a generating facility costing $10,000, the effective cost of the asset for tax purposes is $9,000.

(Exh. WM-6, at 3-4). The Company now proposes to retain for itself the remaining value of the ITC (id. at 6). To support its proposal, the Company cites private letter rulings ("PLR")[10], involving very similar facts, issued by the Internal Revenue Service ("IRS"), whose findings are consistent with the Company's proposal (Company Brief at 30-31, citing Priv. Ltr. Rul. 87-45-005 (August 3, 1987) and Priv. Ltr. Rul. 105884-99 (October 26, 1999)).

B. Position of the Parties

1. The Attorney General

The Attorney General argues that the Company's customers, and not the Company itself, are entitled to the full value of the unamortized ITC associated with the generating assets sold (Attorney General Brief at 17). Any other treatment, the Attorney General alleges, would be in sharp contrast to the treatment of unamortized ITCs on divested plants by other Massachusetts utilities and contrary to the Department's existing approach to ratemaking (id.). With respect to the Company's reliance on published PLRs in this matter, the Attorney General states that PLRs are nothing more than advisory communications prepared by individuals in the Office of the Assistant Chief Counsel for the IRS which do not have the force of law and are not binding on anyone other than the party requesting the ruling (id. at 19-20). Finally, the Attorney General avers that, even if the IRS were to penalize the Company for a violation of

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10 A private letter ruling is a written statement directed to a particular taxpayer that interprets and applies the tax laws to the taxpayer's specific set of circumstances. In order to receive a PLR, a taxpayer must request a ruling from the IRS on the particular issue in question. A PLR is only binding on the taxpayer seeking it; however, they are commonly relied upon in the tax industry as indicative of the IRS' opinion on matters of tax law interpretation (Tr. 2, at 227-228).

the normalization requirements[11] of § 46(f) of the Internal Revenue Code and require the Company to repay the unamortized balance of the remaining generation-related credits, the Company's customers would be no worse off than if the Department had allowed the Company to retain these credits for itself (id. at 19).

2. The Company

The Company states that it can no longer reduce transition charges by amortizing the fossil/hydro portion of accumulated deferred investments tax credits now that these generating assets have been sold (Exh. WM-6, at 3). To do so, the Company contends, would constitute a normalization violation (id. at 3-4). According to the Company, § 46(f) requires that accumulated investment tax credits be amortized for ratemaking purposes over the book depreciation life of the assets that generated the credits (id. at 3-4). The Company alleges that, because book depreciation stops once the assets are sold, there ceases to be a ratable period over which to amortize any remaining credits (id. at 4). The Company concludes that continued amortization of investment tax credits, once the related assets have been sold, constitutes a violation of the § 46(f) normalization rules (id.). The Company alleges that such a violation would result in the Company having to recapture (i.e., repay to the United States Treasury) the remaining value of unamortized investment tax credits (Company Brief at 31-32). In support of its position, the Company relies on two PLRs, Priv. Ltr. Rul. 87-45-005 (August 3, 1987) and Priv. Ltr. Rul. 105884-99 (October 26, 1999), which it claims

[11] A normalization violation occurs when a utility returns unamortized investment tax credits to customers in a manner which is inconsistent with the provisions of the Internal Revenue Code (Exh. AG-2-32, at 3, citing Pub. L. 99-514, § 211(b)).

are factually similar to its situation. WMECo argues that the Department may reasonably rely on these two PLRs (Exhs. AG-2-32; WM-6, at 7; Company Brief at 30-32, 36).

3. Analysis and Findings

The issue before the Department is whether the Company can retain for itself the remaining value of the unamortized ITC related to the fossil/hydro generating facilities, which were sold in 1999. Unamortized ITCs represent the accumulated amount of reduced income tax payments that have not been returned to customers. These credits are amortized over the book depreciation life of the assets that generated the credits and effectively serve to reduce the depreciation expense included in the cost of service (Exh. WM-6, at 3-4). Beginning on March 1, 1998, with the advent of electric restructuring, the unamortized portion of these credits were used as a direct offset to reduce the amount of transition charges included in customers' bills. In 1999, the Company sold its generating facilities at a profit, i.e., the proceeds of the sale exceeded the net book cost of the facilities sold (Tr. 2, at 263-264). As a result, the Company's customers received a net reduction in transition charges because the amortization of the sales proceeds exceeded the cost of the assets sold.

Because customers are no longer required to pay for the capital costs associated with the generating facilities, the amortization of the ITC associated with these plants should cease as well (Exh. WM-6, at 5-6). This practice is consistent with the IRS' rulings in two PLRs, PLR 8745005 and PLR 105884-99 (Exh. AG-2-32; WM-6; Company Brief at 36). In these cases, the IRS held that, once the assets that generated the investment tax credits had been sold, any remaining credits generated by those assets could no longer be returned to customers

(Exh. AG-2-32, at 2, 9; Company Brief at 36). The consistent findings in these rulings, issued some twelve years apart, provide the Department with guidance on this issue. Even though our regulations do not specifically address the accounting treatment of the ITC following the end of the productive lives of the related properties, the findings in the PLRs are not inconsistent with our own regulations, which provide for the amortization of the ITC over the productive lives of the properties giving rise to the credit. See 220 C.M.R. § 78.00 et seq. Certainly, the productive lives of the fossil/hydro generating facilities ended for WMECo, and its customers, once the assets were sold. Therefore, consistent with our own regulations and the PLRs issued on this matter, the amortization of the ITC should cease at that time as well since there is no remaining productive life over which to amortize the remaining credits. Accordingly, we accept the Company's proposal to cease the amortization of these credits.

VI. UNAMORTIZED MILLSTONE 1 INVESTMENT BALANCES

A. The Company's Proposal

The Company retired its Millstone 1 nuclear power plant ("Millstone 1") on July 24, 1998. D.T.E. 97-120, at 19. The Department permitted the Company to collect the unrecovered cost of Millstone 1 through the transition charge but did not allow WMECo to earn a return on the unamortized balance. Id. at 32-33. The Company proposes reducing the cost of the offset by increasing its income by $389,000 from the ITC associated with the retired plant (Tr. 1, at 96).

B. Positions of the Parties

1. The Attorney General

The Attorney General argues that the $389,000 of unamortized ITC should continue as an offset to the Millstone 1 amortization (Attorney General Brief at 19-20). The Attorney General contends that it was the plant investment in Millstone 1, not the disallowed return as presented by the Company, which generated the ITC (Attorney General Brief at 20, citing Tr. 1, at 96-97). Because the entire unamortized balance of the plant investment in Millstone 1 is being recovered through the transition charge, the Attorney General concludes that the entire amount of the ITC produced by that plant investment should be used to effectively reduce the Millstone 1 transition charge (Attorney General Reply Brief at 19-20).

2. The Company

The Company contends that it had used the unamortized ITC to offset the loss recorded for accounting purposes with respect to the return disallowance on Millstone 1 (Tr. 1, at 97-98). The Company did not address this issue on brief.

C. Analysis and Findings

The disallowed return on the unamortized balance of Millstone 1 did not generate any ITCs (id. at 96). Rather, the plant investment in Millstone 1 that is currently being recovered through the transition charge produced the credit. Therefore, it would be inappropriate to permit the Company to use ITCs to offset an accounting write-off caused by the return disallowance. Accordingly, we find that the ITCs generated by Millstone 1, totaling $389,000, shall continue to offset the Millstone 1 transition charge.

VII. CAPITAL STRUCTURE

A. The Company's Proposal

WMECo states that it calculated the carrying charges on its transition costs based upon its cost of capital in accordance with D.T.E. 97-120 (Exh. WM-1, exh. RAB-4, at 12). That cost of capital was based upon the average of the Company's 1998 and 1999 capital structures in order to account for changes in its debt/equity balances since its last filing (Exhs. WM-1, exh. RAB-4, at 12; AG-1-35; AG-3-8). The Company states that the 1998 and 1999 capital structures, which consist of long-term debt, preferred stock, and common equity, produce a 12.63 percent and 12.61 percent cost of capital, respectively (Exhs. WM-1, exh. RAB-4, at 12; AG-3-8; Tr. 2, at 133-134).

B. Position of the Parties

1. The Attorney General

The Attorney General argues that the Company's 1999 capital structure must be adjusted to include short-term debt (Exh. AG-1, at 30-31). The Attorney General asserts that this adjustment is necessary because the sum of the Company's common equity, preferred stock, and long-term debt in 1999 is less than the amount needed to finance the Company's net operating assets over the year (id.). The Attorney General's proposed adjustment would not include all of WMECo's short-term debt, but only the short-term debt that was used to retire long-term debt (Attorney General Brief at 21). The Attorney General's proposed capital structure would lower the Company's 1999 cost of capital from 9.29 percent to 9.14 percent (Exhs. AG-1-35, at 3; AG-1, exh. DJE-1, at 6A).

2. The Company

The Company argues that the Attorney General's proposal to include short-term debt in its 1999 capital structure is inconsistent with the Department's long-standing precedent of excluding short-term debt in determining the capital structure of electric companies (Exhs. AG-1-35; AG-3-8; WM-5, at 25; Tr. 2, at 135-137).[12] The Company further states that the short-term debt is used only to finance daily operations and construction work in progress, not the Company's long-term investments (Exh. WM-5, at 25; Tr. 2, at 135-137). The Company therefore concludes that the Department must reject the Attorney General's position and compute the Company's cost of capital based on the updated capital structure presented in Exhibit AG-1-35.

C. Analysis and Findings

The Department's long-standing precedent in deciding the appropriate capital structure to be used in transition cost recovery schedules is to use the capital structure that supports the investments for which the transition costs are being calculated. D.T.E. 97-120, at 99; Cambridge Electric Company, Commonwealth Electric Company, and Canal Electric Company, D.P.U./D.T.E. 97-111, at 79 (1998). The capital structure supporting the investments is calculated by using the cost rates of long-term debt and preferred stocks. D.T.E.

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12 The Company distinguishes this proceeding from Western Massachusetts Electric Company, D.T.E. 00-40 (2000), where the Company included short-term debt as part of its capital structure on the projected date of securitization. The Company states that unlike the present case, the short-term debt in D.T.E. 00-40 served as a proxy for long-term debt, since the securitization and divestiture proceeds were not finalized, making it difficult to determine the precise debt/equity ratio until the application of the proceeds was completed (DTE-RR-11).

97-120, at 99; D. P.U./D.T.E. 97-111, at 79. There is no record evidence to indicate that WMECo used the proceeds of short-term debt issuances to refinance a portion of its long-term debt in 1999. Furthermore, the record in this proceeding does not support the Attorney General's position that the sum of the Company's common equity, preferred stock, and long-term debt for calendar year 1999 was less than the amount needed to finance its net operating assets over that year (Exh. AG-1, at 30-31).

Accordingly, the Department finds no basis for departing from its established precedent of excluding short-term debt in determining an electric company's capital structure. Therefore, the Department finds that the Company's revised capital structure and cost of capital as shown in Exhibit AG-1-35 are appropriate for calculating the carrying charges.

VIII. TRANSMISSION-RELATED ADJUSTMENT

A. The Company's Proposal

WMECo proposes to reduce by $2.5 million the $47 million base purchase price paid by Consolidated Edison Energy Massachusetts, Inc. ("CEEMI") for the purchase of WMECo's non-nuclear (fossil/hydro) generating assets (Exh. WM-1, exh. RAB-4, at 4B). This $2.5 million adjustment would correspondingly reduce the net divestiture proceeds to be credited to WMECo's transition costs (id.).[13]

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13 In Western Massachusetts Electric Company, D.T.E. 99-29 (1999), the Department approved WMECo's proposal for the sale of substantially all of its non-nuclear generating assets to Consolidated Edison Energy, Inc., who in turn assigned the purchase and sale agreement and related agreements to CEEMI. The scope of the D.T.E. 99-29 proceeding was limited only to WMECo's request for approval of the divestiture (and for Exempt Wholesale Generator status) and did not include the

(continued…)

The Company states that this $2.5 million adjustment represents CEEMI's prepayment associated with "an intangible transmission asset" representing the right to use certain interconnection facilities needed to transmit power generated from the divested generating units to the pool transmission facilities ("PTF") network and the transmission grid (Exh. WM-5, at 4-5; Tr. 3, at 303).[14] The Company states that the divested generating facilities are located in the non-PTF portion of the transmission network and thereby require interconnection (Tr. 3, at 303). The Company adds that the interconnection facilities connecting these divested generating units are not dedicated facilities and that if "another generating unit wanted to connect to that network, there would have to be additional costs to that network" (id. at 342-343).

The Company states that this $2.5 million prepayment is associated with the interconnection charge under Northeast Utilities' Transmission Service Tariff No. 9 ("Tariff T-9"), a WMECo transmission tariff on file with the Federal Energy Regulatory Commission ("FERC") (Exh. WM-5, at 3). The Company states that, although the amount of $2.5 million is not currently included in the existing Tariff T-9, it intends to make a filing with FERC that

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[13](…continued)
ratemaking treatment of the sale proceeds. D.T.E. 99-29, at 1-2.

[14] The applicable divested generating facilities consist of three units located at West Springfield (Tr. 3, at 303, 340-341, Exh. AG-5-11). WMECo's divestiture includes other generating assets that are directly connected to the PTF (Tr. 3, at 340-343). See D.T.E. 99-29, at 4.

would include lower transmission expenses to account for $2.5 million in transmission revenues, thereby flowing back these revenues to WMECo ratepayers (Tr. 3, at 305-306).[15]

The $2.5 million figure consists of two cost components: (1) $1.2 million, representing the total of the allocated net book values of the sub-stations that link the divested generating units to the non-PTF facilities;[16] and (2) $1.3 million representing "the carrying costs associated with other continuing facility use expenses for the term of service, equal to ten years" (Exh. AG-5-11; Tr. 3, at 348-349).

B. Positions of the Parties

1. The Attorney General

The Attorney General opposes the Company's proposal to reduce its net proceeds from the sale of generating facilities by $2.5 million and proposes that, instead, the Company should use the $2.5 million to reduce its transition costs (Attorney General Brief at 25). The Attorney General claims that by allocating the $2.5 million to a newly created "intangible" asset to interconnect the divested generating facilities to the WMECo transmission system, WMECo has

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15 During evidentiary hearings, the Company stated that it intended to file with FERC before the end of 2001 (Tr. 3, at 306). However, the Company subsequently informed the Department by letter dated March 19, 2002, that due to a number of factors unrelated to this investigation, it was unable to file at the end of 2001, but anticipates making a filing sometime in 2002.

16 The net book values of the West Springfield, Woodland Road, and Doreen Street sub-stations are: $0.9 million, $0.5 million, and $0.6 million, respectively (Exh. AG-5-11). Based on the CEEMI load relative to the NU plus CEEMI load, which are respectively: 78 percent, 50 percent, and 38 percent, the corresponding allocated net book values are: $0.7 million, $0.2 million, and $0.2 million (id.). The Company states that this calculation is consistent with its Tariff T-9 (id.; Tr. 3, at 348-352).

denied its customers the full benefits of the divestiture, and further asserts that credits will flow to shareholders, rather than customers, "unless WMECo instantaneously files a transmission rate case at FERC" (id. at 23).

The Attorney General states that the Restructuring Act requires that all proceeds from any divestiture and sale of generation facilities shall be applied to reduce the selling electric company's transition costs (id., citing G.L. c. 164, §1A(b)(3)). The Attorney General adds that the formula for calculating transition charges approved in D.T.E. 97-120 does not include "intangible transmission assets" as allowable reductions to the proceeds from a divestiture (id. at 23, citing Exh. AG-2, at 4, lines 9-17; Tr. 1, at 24-25). Contrary to the Company's claim, the Attorney General asserts that the $2.5 million was not a payment by CEEMI for actual transmission service but instead for access to the transmission system (Attorney General Reply Brief at 16).

The Attorney General claims that WMECo's proposal is an allocation of the divestiture proceeds between the seller and buyer for income tax purposes that does not change the substantive nature of the amounts received by WMECo as proceeds from the sale of the generating facilities (Attorney General Brief at 23-24). The Attorney General claims that the allocation of the purchase price to this "intangible transmission asset" was mentioned only in the paragraph addressing the allocation for income tax purposes in the Purchase and Sale Agreement ("PSA") between WMECo and CEEMI (Attorney General Reply Brief at 16, citing Exh. AG-3-10 (Bulk) Section 2.7 and Second Amendment). Claiming that the PSA does not mention elsewhere the allocation of the $2.5 million, the Attorney General asserts that the intent of the parties relating to this allocation is for income tax purposes only and that the $2.5 million was not a prepayment for any actual transmission service (Attorney General Reply Brief at 16). The Attorney General adds that WMECo's characterization of the adjustment as "transmission-related" cannot control the treatment of proceeds for the purpose of calculating the Company's transition charge (Attorney General Brief at 24, citing Exhs. AG-1, at 7-8; AG 2, at 3-5; AG-3-10).

The Attorney General asserts that WMECo's proposal is inconsistent with its obligation to take all reasonable steps to mitigate its transition costs to the maximum extent possible (id. at 24, citing G.L. c. 164, § 1G(d)(1)). The Attorney General argues that by proposing to record the $2.5 million proceeds as revenues and amortize them as transmission revenues, WMECo denies its ratepayers the benefits to which they are entitled to under both the Restructuring Act and WMECo's approved transition charge formula (id. at 24). Noting that WMECo will not provide carrying costs on the unamortized balance, the Attorney General claims that ratepayers will lose the time value of money (id.).

In response to WMECo's claim that there is no basis for treating the Tariff T-9 charges differently from any other reductions to the base purchase price, the Attorney General asserts that this item is distinguishable from the other reductions (id.). The Attorney General reasons that the other items shown in Exhibit WM-1, exhibit RAB-4, at 4B, represent either cash expenditures directly associated with the divestiture or cash investments previously made by

WMECo that were transferred with the divested plants (id. at 24-25).[17] The Attorney General asserts that "[t]here is no such cost attributable to the Tariff T-9 prepayment for access to the transmission system in perpetuity" (id. at 25, citing Exh. AG-2, at 2-3).

2. The Company

The Company asserts that it properly deducted the amount pertaining to transmission service from the proceeds of its 1999 sale of its generating assets (Company Brief at 45). The Company states that WMECo and CEEMI engaged in negotiations and agreed that the purchase price for the needed transmission access would be \$2.5 million at the time of sale of the generating assets (id.). The Company notes that supporting revenue calculations were provided for this amount (id. at 49, citing Exh. AG-5-11; Tr. 3, at 349). The Company claims that this amount is consistent with the Company's FERC-approved Tariff T-9 for prepaid charges related to point-to-point transmission service (id. at 45, citing Exh. AG-5-11). The Company adds that purchasers frequently make what is considered a separate and distinct payment for transmission rights to access the PTF system at the time of the payment for generation (id. at

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[17] In response to the Company's assertion that it is not unusual for a purchaser to make a separate and distinct payment for transmission rights to access the PTF system at the same time as the payment of generation, the Attorney General argues that the principle of "reasoned consistency" precludes the Department from adopting the Company's proposed method. The Attorney General claims that no other Massachusetts utility has attempted to deduct from the gross divestiture proceeds an amount allocated to an intangible right to transmission in calculating the net proceeds from divestiture (Attorney General Brief at 26, n.11, citing Boston Gas Company v. Department of Public Utilities, 367 Mass. 92, 104 (1975); Attorney General Reply Brief at 16-17).

46, citing, Tr. 3, at 304).[18] The Company claims that WMECo's ratepayers will benefit from the $2.5 million transmission payment from CEEMI in the manner that all transmission revenues benefit ratepayers through the operation of the FERC-approved tariff (Tr. 3, at 305).

The Company asserts that its proposed treatment of the $2.5 million proceeds relating to transmission access is proper because the Restructuring Act specifies that only generation-related proceeds are to be applied against transition costs, and further claims that transition costs refer only to those generation costs that are stranded (Company Brief at 46, citing G.L.c. 164, § 1A(b)(3)). The Company adds that transition costs may be recovered only for generation-related assets and obligations determined to have been prudently incurred and associated with producing electricity (id., citing G.L. c. 164, § 1G(b)(1)). The Company claims that transmission assets have never been included in the calculation of transition costs and are totally distinct and separate from the sale of generation assets (id.).

The Company acknowledges that the Second Amendment to the PSA provides for the $2.5 million allocation of transmission costs for tax purposes (id. at 48). The Company claims that the PSA provision supports the Company's method because any time one entity sells assets to another entity, tax law requires that the sale price be allocated to the various assets acquired (Tr. 3, at 311-312). The Company adds that, because part of the sale was for generation and

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18 In response to the Attorney General's argument that the principle of "reasoned consistency" precludes the use of the Company's method, the Company contends that the Department has no precedent concerning transmission service payments taking place at the same time as a sale of a generation asset (id. at 46, n. 28).

part was for transmission, WMECo and CEEMI wanted to recognize properly the allocation to each type of asset in the Second Amendment to the PSA (Company Brief at 48).

C. Analysis and Findings

The issue before the Department is whether WMECo can reduce by $2.5 million the $47 million base purchase price paid by CEEMI for the purchase of WMECo's fossil/hydro generating assets, or whether, as the Attorney General contends, the Company should be directed to use the $2.5 million to reduce its transition costs. The Restructuring Act provides that the Department shall "identify and determine . . . those costs and categories of costs for generation-related assets . . . which may be allowed to be recovered through a non-bypassable transition charge . . . ." G.L. c. 164, § 1G(a)(1). The Restructuring Act further provides that all proceeds from any divestiture of generating facilities "that inure to the benefit of ratepayers, shall be applied to reduce the amount of the selling company's transition costs." G.L. c. 164, § 1A(b)(3). In addition, the Restructuring Act requires electric companies to take "all reasonable steps to mitigate [transition costs] to the maximum extent possible . . . ." G.L. c. 164, § 1G(d)(1).

The Company claimed that the $2.5 million amount represents the allocated cost of "an intangible transmission asset," specifically, the right to the perpetual use of interconnection facilities needed by CEEMI to transmit power to the electric grid from the generating units CEEMI purchased from WMECo (Exh. WM-5, at 4-5; Exh. AG-3-10). The Department notes that Section 2.7 of the PSA provides for this allocation. More specifically, the Second Amendment that amended Section 2.7 of the PSA provides that:

> $2,500,000 shall be allocated to the prepayment of the "Interconnection Facilities Charge" for Buyer's perpetual use of "Interconnection Facilities" (as such quoted terms are defined in the Interconnection and Operation Agreement) with regard to certain Acquired Assets (or their modification of replacement) as more fully set forth in Section 5.1.1 of the Interconnection and Operation Agreement.

(Exh. AG-3-10). CEEMI's "perpetual use" of an allocated portion of these interconnection facilities, as provided for in the PSA, demonstrates that those facilities are intrinsically linked to WMECo's divested generating assets. The fact that the $2.5 million figure includes fixed allocations of the net book values of the sub-stations connecting the divested generating assets to the electric grid, only serves to underscore this intrinsic link between the interconnection facilities and the divested generating units.

The Company acknowledged that, although the needed interconnection facilities were not constructed as dedicated facilities for the divested generating units, an additional build-out cost to the transmission network would be required for any other generating unit seeking to connect to that network (Tr. 3, at 342-343). CEEMI's payment for its perpetual use of the needed interconnection facilities represents incremental costs associated with its purchase of those divested generating units. The Department concludes that the Company's characterization of the $2.5 million adjustment as an intangible transmission-related asset cannot control the treatment of the divestiture proceeds for the purpose of calculating the Company's transition charge. Accordingly, consistent with the G.L. c. 164, §1A(b)(3), and for the purpose of determining WMECo's transition charge, the Department rejects WMECo's proposal to reduce by $2.5 million the $47 million base purchase price paid by CEEMI for the purchase of WMECo's fossil/hydro generating assets, and instead directs the Company to reduce its transition costs by $2.5 million in its compliance filing to this Order. The statute, rather than how the Company structured the sale or labeled its components, controls how the proceeds will be used.

IX. MADISON-TYPE WHOLESALE CONTRACTS

A. Description of Proposals

1. The Company's Proposal

WMECo proposes to increase the variable component of its transition costs by $52.444 million, representing what WMECo calls "lost revenues" for the March 1, 1998 through December 31, 1999 reconciliation period (Exh. WM-1, at 13-15, exh. RAB-4, at 3). WMECo states that these lost revenues represent the difference between total revenues and total production (operations and maintenance) and administrative and general expenses, adjusted for standard offer revenues and other costs. This adjustment includes a $7.712 million proposed reduction in lost revenues to remove the costs of serving a wholesale contract with the Town of Madison[19] and other similar wholesale contracts ("Madison-type contracts") without including the revenues associate with those contracts (Exh. WM-1, exh. RAB-4, at 3, 3A). The Company refers to these costs as "Madison/Other costs."

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19 On May 13, 1994, NUSCo, as agent for Connecticut Light and Power Company and WMECo ("NU Companies or Seller"), entered into a Bulk Power Supply Agreement ("Madison Contract") with Madison. The Madison Contract states that the NU Companies would provide to Madison firm requirements service, defined as "the provision of firm capacity, transmission, and associated energy" service (DTE-RR-5 at § 1.B.). The Madison Contract includes provisions for fixed annual capacity charges and fixed annual energy charges for the contract term from 1994 through 2003 (id. at §§ V.A.1, V.A.2).

The Company states that its proposed Madison/Other costs adjustment of $7.712 million, consisting of $3.008 million for 1998 and $4.704 million for 1999, represents the generation costs associated with supplying firm requirements of "wholesale, market-based contract customers" (Exhs. WM-1, at 14, exh. RAB-4, at 3, 3A; AG-1-15). The Company claims that, in the past, the generating costs associated with serving the Madison contract, or other similar wholesale contracts, were excluded from retail generating costs that were recovered through the Department's Fuel Adjustment Clause ("FAC") (Exh. WM-5, at 20-21).

2. The Attorney General's Proposal

The Attorney General claims that the Company's proposed Madison/Other costs adjustment is understated by $1.036 million. The Attorney General proposes an additional adjustment, consisting of: (1) $445,000,[20] representing WMECO's March 1, 1998 through December 31, 1999 capacity revenues from Madison, and (2) $591,000,[21] representing WMECo's March 1, 1998 through December 31, 1999 energy revenues from Madison that are

[20] The Attorney General claims that WMECo's capacity revenues from Madison for 1998 and 1999 were $209,000 and $236,000, respectively (Exh. AG-1, exh. DJE-1, at 5A, citing FERC 1999 Form 1). The Attorney General calculated the 1998 amount to be "in proportion to 1999 capacity and energy" (Exh. AG-1, exh. DJE-1, at 5A, n.1).

[21] For 1999, the Attorney General calculated WMECo's energy revenues from Madison that are in excess of the costs associated with the Madison contract to be equal to the annual Madison energy revenue less the "Madison Credit at Decremental Cost," resulting in $313,000 (Exh. AG-1, exh. DJE-1, at 5A, citing Exhs. AG-3-4; AG-1-15). For the March 1 through December 31, 1998 period, the Attorney General calculated the corresponding amount "[i]n proportion to energy revenue and decremental cost [in] 1999," resulting in $278,000 (Exhs. AG-1, exh. DJE-1, at 5A, n.3; AG-2, exh. DJE-1R, at 5A, n.3). The Company defined "decremental costs" as the decrement in system average energy cost with and without service to the Madison contract (Tr. 2, at 148-149).

in excess of the costs associated with the Madison contract (Exh. AG-1, at 29).[22] Accordingly, the Attorney General proposes that the Company's $52.444 million in lost revenues, which the Company seeks to recover through the variable component of transition costs, be reduced further by $1.036 million (id.).

B. Positions of the Parties

1. The Attorney General

The Attorney General asserts that, although WMECo has removed the energy costs associated with the Madison Contract, it failed in its calculations to recognize capacity revenues and energy revenues in excess of costs associated with the contract (Attorney General Brief at 29). The Attorney General argues that, since all generation costs are included in the transition charge, all revenues attributable to those generating assets should also be recognized (id.). The Attorney General disagrees with the Company's claim that all costs and revenues related to the Madison-type contracts were removed from rates (Attorney General Reply Brief at 20, citing Company Brief at 42). The Attorney General claims that the capacity or fixed generating costs, and indirect costs associated with those wholesale contracts, were not removed from retail rates and that retail ratepayers were not insulated from those costs (Attorney General Brief at 30, Attorney General Reply Brief at 20, citing Tr. 1, at 66).

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[22] For the March 1, 1998 through December 31, 1999 period, there were no significant revenues from "Other" contracts, similar to the Madison contract, i.e., only approximately $6,000 was received by WMECo from a Rhode Island Pilot Program (DTE-RR-7; Exh. AG-3-4).

The Attorney General maintains that, because the Company is recovering all of its fixed costs through the transition charge and keeping for itself the margin on its wholesale sales, WMECo, in order to provide proper mitigation of the wholesale fixed generating costs that are included in the transition charge, should either: (1) allocate a portion of the fixed generating costs, including operation and maintenance and plant costs, to wholesale sales; or (2) credit all the revenues from these sales against the Company's generating operating costs (Attorney General Brief at 29-30). In support of the second option, the Attorney General proposes to reduce the Company's transition costs by $1.036 million (Attorney General Brief at 30, citing Exh. AG-2, exh. DJE-1R, at 5).

The Attorney General contends that Department precedent supports mitigation of the Madison-type contracts in this proceeding (Attorney General Reply Brief at 18). According to the Attorney General, if a specific element of transition cost mitigation, namely the revenues from the Madison-type contracts, did not arise in the Department's approval of the Company's original restructuring plan, that alone does not eliminate the Company's statutory obligation to continue to maximize cost mitigation (id.).

In response to WMECo's argument that the Attorney General is precluded from investigating the mitigation of the Madison-type contracts by res judicata, the Attorney General argues that there has been no finality of decision with regard to mitigation of these contracts in WMECo's reconciliation proceedings and that the Company has an ongoing obligation to maximize mitigation (id. at 17). Further, the Attorney General notes that the format used by the Company to calculate the generation operating costs in D.T.E. 97-120 is different from the format presented in this case (Tr. 2, at 280). Therefore, the Attorney General claims that relying on WMECo's res judicata argument would allow the Company to avoid mitigation of the Madison-type contracts (id.).

2. The Company

The Company first argues that the Attorney General is barred by the doctrine of res judicata from raising the Madison-type contract issue in this or any future reconciliation proceeding because the Attorney General did not raise this issue in WMECo's restructuring proceeding (Company Brief at 37-39). Furthermore, WMECo argues that because the Department issued a final Order on the categories of costs that can be recovered, a reinvestigation of this issue is not appropriate (Company Brief at 37-39).

The Company asserts that Attorney General's proposal is illogical and is based on a faulty premise (Company Brief at 41; Company Reply Brief at 14). The Company maintains that it has always insulated retail customers from the risks and benefits of the Madison-type contracts by excluding both the costs and revenues consistent with the Company's FAC filings approved by the Department (Company Brief at 41-42, citing DTE-RR-5; Company Reply Brief at 14). The Company adds that any costs allocated to WMECo as a result of the Madison Contract through the NUG&T were removed from the FAC calculations (id. at 42, citing DTE-RR-7).

The Company claims that its Madison-type contracts did not impose additional capacity costs, as it never had to buy incremental capacity to cover the Madison-type contracts (id. at 41, citing Tr. 2, at 146, 150, 152).[23] The Company asserts that it is not appropriate to implement either of the Attorney General's recommendations because: (1) WMECo has always removed all the costs and revenues relating to the Madison-type contracts; and (2) as an "incremental contract" there were no costs borne by customers other than the energy costs, which were excluded from the FAC (id. at 42). The Company argues that: "[i]n any case, it does not follow that if there were some fixed costs that all the benefits of the contract should somehow be granted to WMECO customers as a windfall" (id.).

C. Analysis and Findings

The Department first addresses the Company's claim that an investigation of the Madison-type contracts violates the doctrine of res judicata. As the Attorney General has noted, the format used by the Company to calculate the generation operating costs in D.T.E. 97-120 is different than the format presented in this case (Tr. 2, at 280). Specifically, "Madison/Other Costs" were not included in the calculation of generation operating costs set forth in Exhibit 13EC, Schedule 1, at 3A in D.T.E. 97-120. However, in Exhibit WM-1, exhibit RAB-4, at 3A, submitted in this proceeding, a line item for "Madison/Other Costs" is included. As such, the issue of the Madison-type contracts had not been addressed in D.T.E. 97-120. The Department recognizes the need for finality in its orders to provide companies with certainty in the conduct of their business. Boston Consolidated Gas Co. v. Department of Public Utilities, 321 Mass. 259, 265 (1947). The Department, however, has a

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23 According to WMECo, however, it did have to purchase incremental energy to serve these wholesale customers (Tr. 2, at 144-145).

statutory mandate to approve charges for transition costs as well as audit, review, and reconcile the difference between projected and actual transition costs. G.L. c. 164, § 1A. Accordingly, the issue of the cost allocation of the Madison-type contracts is appropriately the subject of review by the Department.

Regarding the Madison/Other cost adjustment, the Department must decide whether WMECo's proposed adjustment of $7.712 million to its lost revenues is consistent with Department precedent and the Electric Restructuring Act for the recovery of transition costs. "Transition costs are the costs determined pursuant to [G.L. c. 164], § 1G which remain after accounting for maximum possible mitigation, subject to determination by the Department." G.L. c. 164, § 1H; 220 C.M.R. § 11.02. In Boston Edison Company, D.T.E. 99-107-A (Phase II) at 28 (2001), the Department determined that, to mitigate transition costs to the maximum extent possible, a distribution company must include in its reconciliation of the transition charge those costs and revenues associated with wholesale sales contracts.

The Company's proposed Madison/Other cost adjustment removed its generation costs associated with the Madison-type contracts, using a method similar to that employed in the Company's fuel charge filings prior to electric restructuring (DTE-RR-6). That method, however, excluded all capacity and energy revenues associated with the Madison-type wholesale contracts from the calculations. In accordance with G.L. c. 164, § 1G(d), WMECo must mitigate its transition costs to the maximum extent possible. The same generation resources that served the Madison-type contracts also served the Company's retail ratepayers (Exh. AG-1-15). Therefore, consistent with the precedent established in D.T.E. 99-107-A at

28, the Company must reconcile the Madison-type wholesale revenues and costs. In this manner, all the revenues received from the Madison-type contracts will be used to reduce lost revenues, taking into account the total costs associated with serving such contracts. Accordingly, the Department rejects the Company's method for determining its proposed Madison/Other cost adjustment.

The Attorney General has proposed an alternative adjustment based on a method that reconciles wholesale costs and revenues. As stated above, the Attorney General's method is consistent with Department precedent. Therefore, the Department accepts the Attorney General's proposed adjustment method. The Department notes, however, that the numbers used in the Attorney General's calculation of the proposed alternative adjustment of $1.036 million are based on approximations and assumptions rather than actual data. Accordingly, while the Department accepts the proposed adjustment method, we reject the Attorney General's proposed adjustment amount of $1.036 million and direct the Company to apply the Attorney General's adjustment method in reconciling those costs and revenues associated with the Madison-type contracts in the lost revenues component of the transition charge. The Company is directed to make these adjustments and provide supporting documentation of such in its next reconciliation filing.

X. COMPLIANCE FILING REQUIREMENTS

A. Positions of the Parties

1. The Attorney General

The Attorney General asserts that the Company should be directed to make a compliance filing following this proceeding that shows the actual transition costs compared against corresponding transition revenues for all periods preceding the period being reconciled in this case (Attorney General Brief at 36). The Attorney General argues that such information would ensure that any modifications ordered by the Department have been properly incorporated and, further, could prove useful in assessing different potential paths for transition charge recovery in the future (id., citing Exh. AG-1, at 36-37).

2. The Company

The Company proposed providing a compliance filing that shows actual transition costs versus transition revenues for the reconciliation period under review in this filing (Exh. WM-1, at 16). The Company states that, following a final adjudication in this matter, it will make a compliance filing with the Department so that all interested parties can verify that the proper reconciliations mandated by this Order have taken place (Company Brief at 58). The Company states, however, that the provision of data for all past periods is unnecessary and would only perpetuate an open-ended investigation of matters already resolved by the Department in prior adjudications (id. at 59).

B. Analysis and Findings

As stated above, while the Department recognizes the need for finality in its Orders so that companies may conduct their business with stability, we must also continue to fulfill our statutory mandate to approve charges for transition costs as well as audit, review, and reconcile the difference between projected and actual transition costs. Boston Consolidated, 321 Mass. 259, 265; G.L. c. 164, § 1A. To that end, a compliance filing by the Company following the issuance of this Order would help to ensure that the Department's directives in this proceeding have been carried out.

The Company proposed providing actual transition costs versus transition revenues for the reconciliation period under review in this filing, while the Attorney General seeks to include all periods preceding this period being reconciled. This proceeding addresses WMECo's reconciliation filing for the period from March 1, 1998 through December 31, 1999. Although the compliance filing proposed by the Company would be adequate to ensure that the modifications directed by the Department in this Order have been complied with, such a filing in this case is unnecessary because the Department has before it the Company's reconciliation filings for calendar years 2000 and 2001, docketed as D.T.E. 01-36 and D.T.E. 02-20, respectively. Amending these filings to incorporate the changes mandated in this Order would be the most appropriate forum for compliance. The Attorney General's proposal is unduly burdensome, the need for such a filing is not supported by the record, and further, will not present any additional material that will inform the Department's judgment.

Therefore, the Company is directed to make its compliance adjustments and reconciliation filing through an amended filing in D.T.E. 01-36 and D.T.E. 02-20.

XI. ORDER

Accordingly, after due notice, hearing and consideration, it is therefore

ORDERED: That Western Massachusetts Electric Company comply with all directives contained in this Order.

By Order of the Department,

____
Paul B. Vasington, Chairman

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James Connelly, Commissioner

____
W. Robert Keating, Commissiner

____
Eugene J. Sullivan, Jr., Commissioner

____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).